

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

EASTERN DIVISION

No. 05-10849RGS

HELEN RUNGE,

Plaintiff

v.

WALTER J. KELLY,
KERRY L. BLOOMINGDALE, M.D., and
SUNBRIDGE NURSING AND
REHABILITATION CENTER,

Defendants

**DEFENDANT WALTER J. KELLY'S MOTION TO DISMISS
COUNT XIV (ABUSE OF PROCESS)**

NOW COMES the Defendant, Walter J. Kelly, ("Kelly"), pursuant to Fed. R. Civ. P. 12(b)(6), and moves this Court to Dismiss Count XIV (Abuse of Process) of Plaintiff's Second Amended Complaint for failure to state a claim for which relief can be granted. As a matter of law, a claim for abuse of process does not survive the death of the plaintiff. As further grounds in support of this motion, Defendant submits the accompanying memorandum.

WHEREFORE, the Defendant, Walter J. Kelly, requests that this Honorable Court grant his motion to dismiss Counts XIV Plaintiff's Second Amended Complaint.

Respectfully submitted,

The Defendant,
Walter J. Kelly,
By his attorneys,

s/ Michele Carlucci

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Dated: January 22, 2008

CERTIFICATE OF SERVICE

I, Michele Carlucci, certify that on January 22, 2008 I have served a copy of the foregoing to all counsel of record by first class mail and by electronic filing:

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s/ Michele Carlucci
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